

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANTONIO GARCIA-DORANTES,

Petitioner,

v.

Case Number: 05-10172
Honorable David M. Lawson

MILLICENT WARREN,

Respondent.

**ORDER GRANTING MOTION TO REOPEN CASE, DIRECTING CLERK TO
REOPEN CASE FOR STATISTICAL PURPOSES, AND ORDERING RESPONSE TO
AMENDED HABEAS PETITION**

This matter is before the Court on the petitioner's motion to reopen the case following his exhaustion of state court remedies. The petitioner filed his original petition for writ of habeas corpus on July 11, 2005, challenging his convictions for second-degree murder and assault with intent to do great bodily harm on grounds of prosecutorial misconduct; exclusion of minorities from the jury; miscalculation of sentence credit; ineffective assistance of counsel based on trial counsel's failure to move to suppress statements made to the police; sentencing error in violation of the Sixth Amendment; ineffective assistance of counsel based on appellate counsel's failure to raise the preceding issues on appeal. In his petition, the petitioner indicated that he raised the first four claims on direct appeal, but moved to stay the habeas proceedings in recognition of the fact that he did not present the last two claims in federal constitutional terms to the state courts. On October 18, 2005, the Court entered an order granting the petitioner's motion to stay and administratively closing the case. Therein, the Court stated that if the petitioner filed a timely motion for relief from judgment with the state trial court, the habeas proceedings would be held in abeyance pending the petitioner's exhaustion of the unexhausted issues. The Court also instructed that, if he so chose, the petitioner

should file an amended habeas petition within twenty-eight days after the conclusion of the state court proceedings. In the meantime, the Court instructed the Clerk of Court to close the case for statistical purposes only.

On February 13, 2007, the petitioner filed the present motion to reopen the case and an amended petition for writ of habeas corpus. Along with his motion and amended habeas petition, the petitioner included an order from the state trial court, dated November 10, 2005, denying his motion for relief from the judgment on, *inter alia*, grounds of ineffective assistance of appellate counsel and sentencing error in violation of the Sixth Amendment, an order from the state appellate court, dated October 11, 2006, denying his application for leave to appeal, and an order from the state supreme court, dated January 29, 2007, denying his application for leave to appeal the appellate court's order. Given this last date, the petitioner's motion to reopen the case and amended habeas corpus petition were timely in that they were filed within twenty-eight days after the conclusion of the state court proceedings, consistent with this Court's order.

Accordingly, it is **ORDERED** that the motion to reopen the case and to amend the habeas corpus petition [dkt # 8] is **GRANTED**.

It is further **ORDERED** that the Clerk of Court shall reopen this case for statistical purposes.

It is further **ORDERED** that the Respondent shall file an answer to the amended habeas corpus petition in accordance with Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts **on or before March 8, 2007**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: February 15, 2007

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on February 15, 2007.

s/Felicia M. Moses
FELICIA M. MOSES